

FEDERAL COURT OF AUSTRALIA

Applicant in QUD211 of 2019 v Commonwealth of Australia [2019] FCA 1022

File number: QUD 211 of 2019

Judge: **LOGAN J**

Date of judgment: 28 May 2019

Catchwords: **ADMINISTRATIVE LAW** – application under s 45C of the *Australian Citizenship Act 2007* (Cth) for a declaration that a seized document was not forfeited – where applicant applied for Australian citizenship by conferral – where applicant provided his passport to the relevant Department as part of his application – where document was seized under s 256B twenty months after passport was originally given – whether person who decided to seize the document had lawful authority to make that decision – the test under s 45B – reasonable suspicion – whether there was a foundation for a reasonable suspicion that the passport was bogus – whether there was a failure to take into account a relevant consideration – application dismissed

Legislation: *Constitution* s 51
Australian Citizenship Act 2007 (Cth) ss 3, 5, 20, 21, 45A, 45B, 45C
Evidence Act 1995 (Cth) s 155A
Federal Court of Australia Act 1976 (Cth) s 37SF
Migration Act 1958 (Cth) s 5)

Cases cited: *AGG17 v Commonwealth of Australia* [2018] FCA 242
Burton v Honan (1952) 86 CLR 169
Forbes v Traders' Finance Corporation (1971) 126 CLR 429
George v Rockett (1990) 170 CLR 104
Goldie v The Commonwealth of Australia (2002) 117 FCR 566
Liversidge v Anderson [1942] AC 206
Minister for Aboriginal Affairs v Peko-Wallsend Ltd (1986) 162 CLR 24
Mutual Pools & Staff Pty Ltd v The Commonwealth of Australia (1994) 179 CLR 155
R v N [2015] QSC 91
Re Director of Public Prosecutions; Ex parte Lawler

(1994) 179 CLR 270
Ruddock v Taylor (2005) 222 CLR 612
Sun v Minister for Immigration and Border Protection
(2016) 243 FCR 220

Date of hearing:	27-28 May 2019
Registry:	Queensland
Division:	General Division
National Practice Area:	Administrative and Constitutional Law and Human Rights
Category:	Catchwords
Number of paragraphs:	32
Solicitor for the Applicant:	Irish Bentley Lawyers
Counsel for the Respondent:	Mr B McGlade
Solicitor for the Respondent:	Sparke Helmore

ORDERS

QUD 211 of 2019

BETWEEN: **APPLICANT IN QUD211 OF 2019**
Applicant

AND: **COMMONWEALTH OF AUSTRALIA**
First Respondent

MINISTER FOR HOME AFFAIRS
Second Respondent

JUDGE: **LOGAN J**

DATE OF ORDER: **28 MAY 2019**

THE COURT ORDERS THAT:

1. The amended originating application be dismissed.
2. The applicant pay the respondents' costs, of and incidental to the application, to be taxed if not agreed.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

(Revised From Transcript)

LOGAN J:

- 1 The applicant is a foreign national. He came to Australia lawfully, entering the country holding a student visa granted on 27 July 2008. Later, on 17 February 2014, he was granted, upon his application under the *Migration Act 1958* (Cth) (**Act**), a Protection (Class XA) visa (**protection visa**). He still holds that visa.
- 2 So as not to subvert the intention of the Act with respect to anonymity in relation to the holding of a protection visa, I made an interlocutory order under s 37AF of the *Federal Court of Australia Act 1976* (Cth) providing for particular restrictions in relation to publication of identifying details in relation to the applicant. The orders extended to the use of a pseudonym for the applicant for the purposes of these proceedings.
- 3 On 1 August 2016, the applicant applied under the *Australian Citizenship Act 2007* (Cth) (**Citizenship Act**) for citizenship by conferral. The requirements for becoming an Australian citizen by conferral are set out in s 20 of the Citizenship Act. Eligibility is the subject of s 21 of the Citizenship Act. For present purposes it is sufficient to note that one of the eligibility requirements is Ministerial satisfaction that an applicant is a permanent resident, both at the time when the application for citizenship is made and at the time of the Minister's decision on the application: s 21(2)(b) of the Citizenship Act.
- 4 A "permanent resident" is defined by s 3 of the Citizenship Act by reference to s 5 of that Act. In turn, one feature of the definition found in s 5 is that the person concerned holds a permanent visa as that term is defined in the Migration Act. Suffice it to say, as the holder of a protection visa, the applicant held a permanent visa. As part of the process by which his application for citizenship was considered by the then Department of Immigration and Border Protection (**Department**), the applicant attended at the Department's Brisbane office on 19 April 2017. There he undertook a citizenship interview so as to fulfil one of the other requirements for citizenship. He also presented to an officer of the Department a number of identification documents. These materially concluded a document which, by interlocutory order in this proceeding, is known as "the impugned passport". He was given a receipt for those documents by the officer on 19 April 2017.

5 Much later, by a letter dated 21 December 2018, a different officer, of what by then had become the Department of Home Affairs, gave to the applicant notice of seizure of the impugned passport. The notice advised that:

This document has been seized under subsection 45B(1) of the *Australian Citizenship Act 2007* ('the Act').

The reason for the seizure is because I reasonably suspect that the document is forfeited under subsection 45A(2) of the Act (see subsection 45B(1) of the Act). A bogus document provided in contravention of subsection 45A(1) of the Act is forfeited to the Commonwealth (see subsection 45A(2) of the Act).

The reason for my suspicion is that;

- based on an assessment of the document and other available information, it is reasonably suspected that the document is a 'bogus document' as defined in subsection 5(1) of the *Migration Act 1958*, being a document that has been fraudulently altered.

6 It is necessary now to set out from the Citizenship Act the definition of "bogus document" in ss 3, 45A and 45B:

3 Definitions

...

bogus document has the same meaning as in subsection 5(1) of the *Migration Act 1958*.

...

45A Prohibition on, and forfeiture of, bogus documents

- (1) A person (whether a citizen or non-citizen) must not give a bogus document to the Minister, a person acting under a delegation or authorisation of the Minister, a tribunal or any other person or body performing a function or purpose under, or in relation to, this Act (the ***official***), or cause such a document to be so given.
- (2) A bogus document given in contravention of subsection (1) is forfeited to the Commonwealth.

45B Seizure of bogus documents

- (1) If the Minister reasonably suspects that a document is forfeited under subsection 45A(2), then the Minister may seize the document.
- (2) As soon as practicable after seizing the document, the Minister must give written notice of the seizure to the person who gave the document to the official under subsection 45A(1).
- (3) The notice must:
 - (a) identify the document; and
 - (b) state that the document has been seized; and

- (c) specify the reason for the seizure; and
- (d) state that the document will be condemned as forfeited unless the person institutes proceedings against the Commonwealth before the end of the period specified in the notice:
 - (i) to recover the document; or
 - (ii) for a declaration that the document is not forfeited.
- (4) For the purposes of paragraph (3)(d), the period must:
 - (a) start on the date of the notice; and
 - (b) end 90 days after that date.

7 It is also necessary to set out the definition of “bogus document” in s 5(1) of the *Migration Act 1958* (Cth):

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly.

8 Section 45C of the Citizenship Act provides:

45C Document condemned as forfeited

- (1) If a document is seized under subsection 45B(1), then:
 - (a) the person who gave the document to the official under subsection 45A(1); and
 - (b) if that person is not the owner of the document – the owner; may, subject to paragraph (2)(b), institute proceedings in a court of competent jurisdiction:
 - (c) to recover the document; or
 - (d) for a declaration that the document is not forfeited.
- (2) The proceedings:
 - (a) may be instituted even if the seizure notice required to be given under subsection 45B(2) in relation to the document has not yet been given; and
 - (b) may only be instituted before the end of the period specified in the seizure notice.
- (3) If, before the end of the period specified in the seizure notice, the

person or owner does not institute the proceedings, the document is condemned as forfeited to the Commonwealth immediately after the end of that period.

- (4) If, before the end of the period specified in the seizure notice, the person or owner does institute the proceedings, the document is condemned as forfeited to the Commonwealth at the end of the proceedings unless there is:
 - (a) an order for the person or owner to recover the document; or
 - (b) a declaration that the document is not forfeited.
- (5) For the purposes of subsection (4), if the proceedings go to judgment, they end:
 - (a) if no appeal against the judgment is lodged within the period for lodging such an appeal—at the end of that period; or
 - (b) if an appeal against the judgment is lodged within that period—when the appeal lapses or is finally determined.

9 On 21 March 2019, within the time for which the seizure notice provided, the applicant instituted proceedings. As his originating application came to be amended on 3 May 2019, he sought, materially:

- 1. A declaration pursuant to s. 45C(1)(d) of the *Australian Citizenship Act 2007* (“**the Act**”) that the Impugned Passport issued to the applicant on 19 April 2017 purportedly seized on 19 April 2017 with notice of such seizure being provided to the Applicant on or about 21 December 2019 (“**the Decision**”) is not and was not forfeited.
- 2. An Order quashing the Decision.
- 3. An Order that the Respondents forthwith return the Passport to the Applicant pursuant to s. 45C(1)(c) of the Act.

10 On 3 May 2019 the applicant filed an amended originating application. The relief sought remained the same, save that the identification number of the impugned passport was deleted and a grammatical error corrected.

11 Insofar as the amended grounds are posited upon an allegation that seizure occurred on 19 April 2017, they are posited upon a false factual premise. There was no seizure of the impugned passport, on the evidence, on 19 April 2017. All that occurred then was a consensual parting of possession by the applicant to an officer of the Minister’s Department in furtherance of a citizenship application. It was not until late November 2018 that the applicant, by his migration agent, expressly requested and required of the Minister’s Department the immediate return of, materially, the impugned passport. That particular request, I have no doubt prompted, in a way, which might earlier have occurred, a decision by

“Daniel” to seize the impugned passport. Had he not so done, the continued retention of the passport would have been amenable to suit by way of a detinue proceeding instituted by the applicant against the Commonwealth for its return.

12 On the face of the originating application, as amended, the reference to s 45C(1)(d) makes it tolerably clear that the application is one which has been instituted under s 45C of the Citizenship Act. As mentioned, insofar as the amended grounds allege errors which are premised upon seizure having occurred on 19 April 2017, they are falsely premised in fact.

13 It became apparent in the course of submissions that there were three bases upon which the applicant alleged that he was entitled to orders that the impugned passport was not forfeited, and that he was entitled to its return. These were:

- (a) an absence of lawful authority on the part of “Daniel” to seize the impugned passport;
- (b) an absence of foundation for a reasonable suspicion that the impugned passport was bogus; and
- (c) an alleged failure to take into account a relevant consideration, namely, that the applicant was the holder of a protection visa with all of the attendant preliminary assessments entailed in the course of public administration in the granting of the such a visa.

14 Irrespective of whether such grounds were explicitly pleaded, even in the originating application, as amended, the Minister, the Commonwealth and the other respondents hardly unfairly approached the proceeding on the basis of engaging on the merits with these bases of challenge. The lawfulness of “Daniel’s” authority to seize was an issue raised, but belatedly, by the applicant. It was met by way of affidavit evidence from the respondents which materially included an instrument of delegation under the hand of the Minister for Home Affairs, and an extract from the records of the department in respect of positions over time occupied by “Daniel”. Whilst there was an objection taken to the reception of this evidence, it was relevant and so the objection was overruled.

15 The signature of a Minister of State is one which I am required to notice judicially. On the face of it, the delegation delegates, materially, to an officer within the department holding an APS 5 appointment the Minister’s power under s 45B of the Citizenship Act. That “Daniel” held an APS 5 appointment, or at least acted in the same and it matters not that he was an

acting officer in that position, in December 2018 is proved by the extract from the Department's personnel records. These, too, were the subject of objection, but they are relevant. They are records apparently kept in the ordinary course of the public administration of a department of State. The *Evidence Act 1995* (Cth), s 155A makes them admissible.

16 Regard to each of these makes it pellucid that "Daniel" held lawful authority by delegation at the time when he made his seizure decision. The evidence establishes that there is no separate record of the seizure decision in the Department's records. By "separate", I mean separate from that which is recorded on the face of the notice of seizure. On the basis of the recording of the notice of seizure, I find that "Daniel" made the seizure decision on 21 December 2018. It is, in my view, permissible to record the making of the decision as well as to notify that decision in the one document. That is what "Daniel" has done.

17 The seizure itself, to be lawful, requires, by s 45B(1), a reasonable suspicion that a document is forfeited under s 45A(2), and then a physical act of seizure. Given that the impugned passport was already in the possession of the Commonwealth, there was no particular need for any manifestation other than by the giving of the notice that the status of possession asserted by the Commonwealth had changed from the consensual to that of seizure. The suspicion itself was one of which necessarily entailed a state of mind, albeit one the holding of which could be recorded. But the suspicion had to be reasonable.

18 That is a convenient note upon which to examine the other bases of challenge. There is no doubt whatsoever that the notice of seizure was given as soon as reasonably practicable after seizure. Indeed, the commencement of the giving of the notice occurred, I find, on the very day seizure occurred, namely, 21 December 2018. The essence of a proceeding under s 45C, at least as presently constituted, is whether the document, the impugned passport, is forfeited. The incorporation by reference by the Citizenship Act of the definition of "bogus document" creates certain difficulties of construction, both in relation to seizure as well as the adjudication of the substantive course of action conferred by s 45C.

19 Neither the researches of the parties, nor my own, have disclosed any earlier proceeding in which a substantive course of action under s 45C of the Citizenship Act has been heard and determined. Last year, in an interlocutory judgment, in respect of such a proceeding *AGGI7 v Commonwealth of Australia* [2018] FCA 242, Charlesworth J observed, at [49]:

49. It is to be recalled that the question of whether a document falls within the definition of the phrase "bogus document" turns upon whether the Minister

reasonably suspects that the document is, relevantly, counterfeit or has been altered by a person who does not have authority to do so: see para (b) of the definition in s 5(1) of the Migration Act. Notwithstanding the subjective element of the definition, it is the applicant's contention that in proceedings commenced "under" s 45C of the Citizenship Act, the task of the Court is to objectively determine whether the Taskera is counterfeit or has been altered by a person who does not have authority to do so. Whether that is the proper construction of s 45C is a matter of some controversy between the parties. Relatedly, the parties are in dispute as to whether s 45C is itself a separate and distinct source of jurisdiction to grant declaratory relief, quite apart from the other pleaded causes of action. It is not necessary to decide these controversies in order to resolve the public interest immunity claim.

As can be seen, the approach taken by the applicant in that case was that it was the task of the Court "to objectively determine whether the [document concerned] is counterfeit or has been [fraudulently] altered by a person who does not have the authority to do so". However, the Court recorded that whether that was the effect of s 45C was a matter of some controversy and did not find it necessary to resolve that at an interlocutory stage. That there is a subjective element in relation to whether a document is forfeited may be conceded, subjective in the sense that a person, either the Minister or a delegate, does have to hold a suspicion, but the mere holding of a suspicion is not sufficient. The suspicion has to be held reasonably. It is apparent that the prescription for a reasonable suspicion takes up and incorporates into the Citizenship Act a sentiment famously voiced in dissent by Lord Atkin in *Liversidge v Anderson* [1942] AC 206, a dissent these days regarded as conventional wisdom.

- 20 The definition of bogus document in the Migration Act is, as I observed in *Sun v Minister for Immigration and Border Protection* (2016) 243 FCR 220 at [3], a minor classic of Orwellian drafting. By that, I mean that a bogus document by definition is not a document which is bogus, but rather one which, on the bases specified in the definition, is reasonably suspected of being bogus. This is a quite different thing from whether or not the document concerned is indeed bogus.
- 21 Incorporating that definition into the seizure power in s 45B, at least literally, leads to some odd possible constructions. The power to seize is dependent upon a reasonable suspicion by the Minister or a delegate that the document is forfeited under s 45A(2). But what is forfeited is a bogus document as defined, and that in turn is a document but reasonably suspected of being bogus. So one might ask rhetorically whether all that is required for seizure is a reasonable suspicion that the Minister has a reasonable suspicion that the document is a bogus document. That would be an absurd construction, albeit a literal one. That there is such a construction possible is elegant proof of incompetency on the part, with respect, of the

Parliamentary draftsmen. Mr McGlade of counsel, who argued the respondents' case with commendable succinctness and fairness, did not seek to promote such an absurdity, instead being content to approach s 45B on the basis that what was required was a reasonable suspicion that the document had one or more of the qualities specified in the definition in the Migration Act, rather than a reasonable suspicion that the Minister reasonably suspected that to be so.

- 22 That being the case, it is not necessary in turn to consider whether, on the literal construction, only the Minister personally could hold the reasonable suspicion, which in turn became the subject of reasonable suspicion for which s 45B provides. Instead, it is sufficient to approach the case on the basis of a shared construction promoted by the parties. In turn, it is sufficient to approach the case on the basis that the substantive cause of action is also dependent upon that same question being answered, namely, whether "Daniel" held a reasonable suspicion that the document was, for one or more of the reasons specified in the Migration Act definition, bogus?
- 23 I make that observation advisedly because it was not part of the applicant's case, as the grounds reveal, to mount an affirmative case on evidence that the impugned passport was not bogus. Instead, the challenge was wholly related to legality, either in terms of lawful authority to seize or some error affecting the formation of the suspicion. A consequence of that is that it is not necessary to consider whether, if an applicant proved on the balance of probabilities that the impugned passport (or whatever document was at issue in another case) was a genuine document; the scheme found in ss 45A, 45B and 45C of the Citizenship Act could nonetheless validly effect a forfeiture on the basis that there was a reasonable suspicion held in good faith. Nor was there any question raised as to whether, if that were the effect of these provisions, they would be within the legislative competence of the Commonwealth Parliament.
- 24 Regimes for forfeiture and condemnation by way of penalty for a transgression of a Commonwealth statute and for the purpose of carrying into effect a statutory intention are by no means unknown or unlawful: see *Burton v Honan* (1952) 86 CLR 169, and *Forbes v Traders' Finance Corporation* (1971) 126 CLR 429. Were there to be a challenge to the validity of the forfeiture and condemnation regime, much would turn upon whether the prescription of forfeiture in the Act was within the legislative power conferred with respect to citizenship and immigration, and whether that extended to the prescription of forfeiture of

what is termed a bogus document, notwithstanding that its owner or the person having an immediate right to its possession might be innocent of complicity in any fraudulent alteration or counterfeiting.

25 A question might arise as to whether the legislative prescription in respect of forfeiture and condemnation fell within that grant of legislative power or whether it amounted to an acquisition of property within s 51(xxxi) of the *Constitution*. If the latter, it would be required to be on just terms, and if so, it may be a moot point indeed as to whether a statutory regime providing that a document remained forfeited just on the basis of reasonable suspicion, even if it were judicially concluded that it was genuine, was valid. But, as I have observed, no such question was raised in the present proceeding, nor even was it required to be confronted in an oblique way by virtue of a positive case that the document was genuine. For further discussion of these questions, though: see *Mutual Pools & Staff Pty Ltd v The Commonwealth of Australia* (1994) 179 CLR 155 and *Re Director of Public Prosecutions; Ex parte Lawler* (1994) 179 CLR 270.

26 As to what constitutes a reasonable suspicion, a helpful summary of authority notably including reference to *George v Rockett* (1990) 170 CLR 104 at 115–116, and *Goldie v The Commonwealth of Australia* (2002) 117 FCR 566, was offered by Carmody CJ (as his Honour then was) in *R v N* [2015] QSC 91 at [35] – [39] (*R v N*):

35. In forming a reasonable suspicion a police officer must, at least, at the time he or she conducts a search, act in good faith on information he or she bona fide believes to be true, even if it is only hearsay, such as an anonymous tip off, and later turns out to be false.
36. Whether a suspicion is reasonably open on the available information is a matter of logic, judgment and degree. All of the circumstances must be considered, including circumstances dependent on conflicting or contradictory considerations. If facts give rise to conflicting inferences of approximately equal probability and the choice between them is no more than a matter of idle speculation or imagination, the suspicion in question may not be reasonable. However, an authentic conclusion will not be unreasonable merely because different interpretations or impressions may be produced from the same set of facts. Thus, the same body evidence may be capable of sustaining opposite but equally plausible and rational conclusions neither of which is demonstrably right nor manifestly wrong.

37. Facts capable of grounding a reasonable *suspicion* may fall well short of supporting a reasonable *belief* but be more cogent than those capable of meeting the benchmark expressed by “reason to suspect”.
38. The more objectively unreasonable a suspicion is the less likely it is to be a genuine one. Moreover, a suspicion that is not grounded in fact to the point of being reasonable is no more reasonable because of a sense of urgency.
39. In *R v Rondo Smart* JA summarised the position thus:
 - (a) A reasonable suspicion involves less than a reasonable belief, but more than a possibility. There must be something, which would create in the mind of a reasonable person an apprehension or fear of one of the state of affairs covered by section 357E (the section at that time relating to the powers to stop search and detain). A reason to suspect that a fact exists is more than a reason to consider a look into the possibility of its existence.
 - (b) Reasonable suspicion is not arbitrary. Some factual basis for the suspicion must be shown. A suspicion may be based on hearsay material, or materials which may be inadmissible in evidence. The materials must have some probative value.
 - (c) What is important is the information in the mind of the police officer [at the time]... Having ascertained that information, the question is whether the information afforded reasonable grounds for the suspicion which the police officer formed. In answering that question, regard must be had to the source of the information and its content seen in the light of the whole of the surrounding circumstances.

[Sic. Emphasis in original. Footnotes omitted.]

As the Chief Justice observed, whether a suspicion is reasonably open on the available information is a matter of logic, judgment and degree.

27 In *Ruddock v Taylor* (2005) 222 CLR 612, Gleeson CJ, and Gummow, Hayne and Heydon JJ observed in their joint judgment at [40]:

40. The short answer to the contention is that, what constitutes reasonable grounds for suspecting a person to be an unlawful non-citizen must be judged against what was known, or reasonably capable of being known at the relevant time ...

28 So one asks in this case, what was known or reasonably capable of being known on 21 December 2018 by “Daniel”? What was known – and this is made explicit if not in the

decision itself, in a follow up response to a request for particulars made by the applicant's migration agent – is a forensic document examiner's report given in May 2018 for the purposes of, materially, informing officers of the Minister's department of an opinion in respect of the impugned passport. As to that, the forensic document examiner opined:

I have examined the [impugned passport] and determined that one or more of the following has occurred: the document's manufacturing or issuing security characteristics are fraudulently compromised or personal data is fraudulently altered.

Therefore, it is my opinion that this is a legitimately manufactured document that has been fraudulently altered.

[Emphasis in original]

- 29 The opinion does not descend to particulars of characteristics which had formed the formation of that opinion, unsupported by a foundation which detailed such particulars. The admissibility of the opinion in relation to whether the document was or was not genuine in a judicial proceeding may be moot. However, it is a very different thing to hold that the document had no persuasive quality whatsoever in relation to the formation, in the exercise of an administrative function, of a reasonable suspicion. The forensic document examiner's report, in my view, having regard to the authorities summarised in *R v N*, was well capable of supporting reasonably the formation of a suspicion that the impugned passport was bogus. The definition of bogus document does not require that any particular person be identified as the author of a particular alteration. It is a necessary inference flowing from the use by forensic document examiner of the adverb "fraudulently" governing "altered" that the alteration, in the examiner's opinion, has occurred by the act of a person not authorised to make such an alteration.
- 30 The applicant contended that regard necessarily also was required to be had to his possession of a protection visa, with all of the attended checks that precede the granting of such a visa in the ordinary course of public administration. For such regard to be necessary it would have to be a relevant consideration in relation to the formation of a reasonable suspicion relevant in the sense described by Mason J in *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24. There is no such explicit prescription of relevance in s 45B or s 45A, or in the definition of bogus document. That is not to say that it would be in any way impermissible to take into account the possession of a protection visa and attended earlier departmental checks. A relevant consideration can, of course, be found by necessary implication. Some support for such an implication is to be found in the eligibility requirement which I have mentioned. But it is a considerable leap from that to add to the

bare fact of possession of a permanent resident visa all of the attendant checks which precede its granting. I do not regard these as, by implication, relevant considerations. Further, the holding of a permanent resident visa says nothing at all about whether or not a particular document is or is not bogus as defined.

- 31 It follows then, from the foregoing, is that the relevant officer, “Daniel”, possessed lawful authority and had material before him which was capable reasonably of grounding a suspicion which he did in fact hold. That being so, and on the basis of the way the case was conducted, there was the requisite reasonable suspicion to enable seizure, and in turn the holding of that requisite reasonable suspicion is, having regard to s 45A(2), sufficient to establish that the impugned passport is forfeited to the Commonwealth. There is no doubt whatsoever that the impugned passport was given. It was voluntarily given on 19 April 2017.

32 What necessarily follows from the foregoing is that the application must be dismissed.

I certify that the preceding thirty-two
(32) numbered paragraphs are a true
copy of the Reasons for Judgment
herein of the Honourable Justice
Logan.

Associate:

Dated: 28 June 2019